

APPENDICES

APPENDIX

A. Becker County Record, Aug. 14, 1988, at 1, col. 1 and 6A, col. 1

NON-INDIANS FEAR RULING—by Bill Pond

A small band of residents living on the White Earth Reservation are deeply troubled about their futures.

They are part of the non-Native American Indian community living on the reservation, which is primarily populated by whites. But they say the White Earth's band's control could very well strip their rights under the U.S. Constitution, rights many people take for granted.

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Resort owners Jane and John Reish and Bob Bruns had dreams of owning their business and living in peace. But political relations between White Earth tribal leaders and whites are crushing their idyllic world.

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. . . White Earth Tribal Chairman Chip Wadena said that may not be the case. If precedence is set, Wadena said the tribe will not immediately adopt the footsteps of the Yakima Nation.

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. . . Today, roughly 30 percent of the population of White Earth is native American, controlling 7 percent of the land.

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. . . Wadena said if white residents chose to live on the reservation, they should be willing to live under White Earth jurisdiction.

"There is nothing that holds them here. Our tribal government does have autonomy. They have to understand there is a different government here," Wadena said.

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B. Detroit Lakes, Apr. 14, 1988, at 1A, 10A

CONTROVERSY OVER FISHING RIGHTS HEATS UP—by James Campbell

Tempers are flaring after the public announcement last week of the 1988 White Earth Reservation tribal fishing regulations.

While the general fishing regulations—which among other things allow tribal members to take a daily catch of 10 each of walleyes, northerns, bass and trout; one muskellunge; 30 crappies; 100 sunfish; and 200 roughfish—are unpopular, they are unchanged this year from last year.

But an experimental spring gamefish spearing season the reservation has instituted for this year is a source of new controversy.

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C. Daily Press, North Wisconsin's Morning Newspaper, July 1, 1988, at 1, col. 1

4 INDIANS CLAIM TIMBER RIGHTS—Two Bands Place Moratorium on Treaty Lumbering

SIREN (AP)—Four Chippewa tribal members, citing Indian treaty rights, want to harvest timber on four tracts of land open for a Burnett County sale, but the county said Thursday the sale will go on as planned.

Meanwhile, two Chippewa bands have passed resolutions placing a moratorium on harvesting timber off-reservation under treaty rights.

"I've been concerned about this for years," said Charles Tollander, Burnett County board chairman.

He sent a letter Thursday to each of the four members of the Lac du Flambeau band, saying the tribal members could be cited for timber theft if they took the timber without following state and local regulations.

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D. Letter from Ann Schoenborn, Co-Chairperson, United Township Associations to Mr. Robert Gleason (Aug. 12, 1983) (discussing White Earth Tribe)

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1. To obtain a true picture of the legal status of all people living within the boundaries of an open reservation like White Earth, a division of the people must be made. The division is Tribal member and Non-Tribal member.

Tribal members are citizens of the White Earth Tribe, United States, State of Minnesota, and respective County, Township, or City in which they reside. As citizens of these governmental bodies they have the right to run for office, elect officials, have a voice in the formation of laws and assessment of taxes, and partake in any services available. They also have one other unique right. That is the right to discriminate against any person on the basis of race. This is most prevalent in the case of hiring practices.

Within any governmental organization the rights of an individual go hand in hand with a responsibility to maintain that organization. Here is where a major division within Tribal members occurs. A Tribal member living and working within reservation boundaries pays no state income taxes while a Tribal member either living or working or both off the reservation pays state income tax like any other Minnesota resident. The responsibility for supporting local services is non-existent for members living in mobile homes or on Tribal land as they do not pay real estate taxes. . . .

Non-Tribal members include all other people of other races and people with Indian heritage who by choice or other Tribal background are not Tribal members. Non-Tribal members make up 70% of the residents of White Earth. This group of people are citizens of all the aforementioned governmental bodies except Tribal. They are financially responsible for all these governmental bodies

including Tribal, without having all of their basic rights. . . .

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. . . An example to demonstrate this dilemma would be a local White Earth businessman. If this person, say a retailer, sells to a Tribal member he now has a consensual relationship. If on the other hand he chooses to not sell to Tribal members he now threatens the economic security or the health or welfare of the Tribe. Either way he stands in a position of being licensed and regulated by a group in which he has no choices. This example can be applied to grocers, gas stations, hardware stores, bait dealers, resorters and farmers, to name a few.

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In our meeting with Mr. Rick Neal we asked to have the U.S. Commission on Civil Rights be directed to study and collect information and appraise Federal laws and policies with respect to discrimination of non-Tribal members living on open reservations. Mr. Neal said this could be Step 2 if necessary.

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E. Letter from David Rasmussen, Game Warden, Minnesota Dept. of Natural Resources to State of Minnesota (May 5, 1988) enclosing Letter from John M. Sieling, Chief Deputy, Becky County, Minnesota to David Rasmussen (April 28, 1988)

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. . . Due to the fact that the White Earth Indian Reservation decided to open up legalized spearing of game fish during the spawning season, we felt that a number of concerned residents that lived within the reservation were upset about the events that had taken place in the past with the trespassing and they anticipated more incidents this year.

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Several of our officers that patrolled the reservation during the spearing season have advised me that the situation up there was very tense in regards to the tribal

members that were spearing on the reservation and with the land owners that own property on the reservation itself. . . .

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EE. Map of Flathead Lake, Flathead Reservation, Montana by Dept. of Interior (March 20, 1915), denotes "Boundary of Former Flathead Indian Reservation"

F. Aquatic Lands Conservation Ordinance No. 87-A of the Council of Confederated Salish and Kootenai Tribes

**AQUATIC LANDS CONSERVATION ORDINANCE—
BE IT ENACTED BY THE COUNCIL OF THE CON-
FEDERATED SALISH AND KOOTENAI TRIBES
that:**

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PART II—FINDINGS AND POLICY

Section 1. Findings.

The Tribal Council finds that:

a. The self-governing capabilities, political integrity, health and welfare, and economic security of the Tribes will be protected and enhanced by Tribal governmental control, regulation and protection of aquatic lands which are critical for the perpetuation of Reservation fisheries and wildlife, the preservation of Reservation water quality, and the maintenance of the health, safety and welfare of Tribal members and thereby of all persons residing on the Reservation.

b. The Treaty of Hellgate July 16, 1855 (12 Stat. 975) reserved to the Confederated Salish and Kootenai Tribes (hereinafter the "Tribes") the exclusive right to hunt and take fish within the exterior boundaries of the Flathead Reservation.

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m. "Reservation waters" means:

(1) all naturally occurring bodies of water within the exterior boundaries of the Reservation regardless of al-

teration by man, including but not limited to lakes, rivers, streams (including intermittent streams), mudflats, wetlands, sloughs, potholes and ponds from which fish and wildlife are or could be taken, but does not include wholly manmade water bodies.

(2) tributaries of waters identified in subpart (1) above;

(3) wetlands adjacent to Reservation waters.

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G. Glacier Reporter, December 12, 1985 at 9, 10 (Proposed Blackfeet Comprehensive Tax Code)

BLACKFEET COMPREHENSIVE TAX CODE

Of the Blackfeet Tribe of the

Blackfeet Indian Reservation—October, 1985

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Section 1.1 Statement of Purpose.

The Blackfeet Tribal Business Council of the Blackfeet Indian Tribe hereby enacts this Blackfeet Tribal Tax Code for matters regarding assessments and collection of taxes imposed by the Tribe, in furtherance of its policy of assuming, to whatever degree permitted by the Constitution, laws and treaties of the Blackfeet Tribe, and by the Constitution, laws and treaties of the United States of America, governmental control over property, persons and business activities within the exterior boundaries of the Blackfeet Indian Nation. Tax revenues collected pursuant to this Code are to be used to provide governmental services which improve the health and welfare of both members and non-members of the Tribe residing within the boundaries of the Blackfeet Nation. To finance and strengthen these tribal governmental policies, the Blackfeet Tribal Business Council of the Blackfeet Indian Tribe hereby adopts and incorporates the ordinances set forth as Chapters, Sections or Provisions, in this Code, as well as any subsequent tax ordinances and amend-

ments thereto which the Business Council of the Blackfeet Tribe may, from time to time, deem necessary and proper.

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H. Great Falls Tribune, April 11, 1987 at 12(A) (discussing Blackfeet 4% possessory tax)

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The Blackfeet Tribe's 4 percent possessory tax on oil companies, railroads, utility firms and rural cooperatives is a bad idea—from start to finish. It may be discriminatory and, at least in the early phases, it disregarded the interests of people and companies that were affected.

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The possessory tax was passed by the Blackfeet Tribal Council on Dec. 30, to take effect two days later, with little advance notice and no public hearing. Tribal officials said the tax was necessary to maintain essential reservation services—such as health programs, the tribal court and the community college.

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The BIA has approved the proposed tax. But Marlenee has asked Interior Secretary Donald Hodel for a moratorium on new tribal taxes on non-Indian interests while his legislation is pending.

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I. Great Falls Tribune, at 1A (discussing Blackfeet 4% possessory tax)

**TRIBAL TAX WINS APPROVAL
OF FEDERAL AGENCY**

By The Associated Press and Tribune Staff

BILLINGS—The Bureau of Indian Affairs has approved a 4-percent tribal tax on utilities, railroads and oil and gas companies that cross the Blackfeet Indian Reservation.

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The Blackfeet tax was the second tribal tax approved in Montana this year. Earlier, a 3-percent tribal tax was imposed on the Fort Peck Indian Reservation.

The tax took local businesses by surprise when a newspaper advertisement in January informed them the tax due by March 23. The tribal business council had passed the measure without hearings at the end of 1986.

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Glacier County officials opposed the tax, saying they fear it will spark a major financial crisis if the affected utilities protest their taxes. County Attorney James C. Nelson said the protests could tie up tax revenue for years and force the county to reduce its services.

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J. Letter from Lee Jacobsen, Secretary of East Slope Taxpayers Association of August 16, 1988, to "whom it may concern" (Aug. 16, 1988)

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Jurisdiction problems have all but stopped lending agencies and insurance companies from doing business here. The oil companies have pulled out and new drilling is at a minimum. The \$300.00 business tax is now at \$1,000.00 for anyone who sells liquor on the Blackfeet Reservations, control of sale of tax free cigarettes and gambling is also strictly under tribal control.

The threat of carrying out the letter of the tax ordinance is making lots of farmers and ranchers and Ag Business Associates very wary. The economy is very bad and so much time and money spent on trying to prevent more problems exist such as this legal brief.

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K. West Valley Watch, Inc., Aug. 17, 1988 (discussing Confederated Tribes of Grand Ronde)

**SENATE CLEARS GRAND RONDE
TRIBAL MEASURE
By George Robertson**

Even though the U.S. Senate last week approved a bill creating a 9,811-acre reservation for the Confederated Tribes of Grand Ronde some opponents are still hoping President Reagan will kill the measure.

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Kathy Thole, a Grand Ronde business owner who has opposed the bill, said if Reagan signs it she might seek a preliminary injunction in the federal courts to prevent the measure from being enacted.

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L. Albuquerque Journal, Aug. 31, 1983, at A-a, A-3 (discussing Sandia Pueblo)

**PUEBLO ASKS RETURN OF
9,000 ACRES IN SANDIAS
By Nolan Hester, Journal Staff Writer**

Sandia Pueblo is seeking the return of almost the entire northern half of the Sandia Mountain Wilderness, claiming it has uncovered a surveying mistake that dropped approximately 9,000 acres from the pueblo's original Spanish land grant.

Tribal officials have asked Rep. Bill Richardson, R-N.M., to introduce federal legislation allowing the transfer—which would include land beneath the Sandia Crest transmission-tower site, the Sandia Peak Tramway, the Juan Tabo picnic area and approximately 100 homes in the northern foothills.

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M. Cheyenne River Sioux Tribe Ordinance No. 42a**Section 1: Declaration of Policy**

As a guide to the interpretation and application of this Ordinance, the public policy of the Cheyenne River Sioux Tribe is declared to be as follows:

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Indians have unique and special employment, subcontract and contract rights and the Cheyenne River Sioux Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. . . .

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C. "Covered Employer" means any employer employing two or more employees who during any 30-day period, spend, cumulatively, 40 or more hours performing work within the exterior boundaries of the Cheyenne River Sioux Reservation.

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Section 3: Indian Preference in Employment

All covered employers, for all employment occurring within the exterior boundaries of the Cheyenne River Sioux Reservation, shall give preference to qualified Indians, with the first preference to local Indians, in all hiring, promotion, training, layoffs, and all other aspects of employment. Such employers shall comply with the rules, regulations, guidelines and orders of the Cheyenne River Sioux Tribal Employment Rights Commission which set forth the specific obligations of employers in regard to Indian preference and local Indian preference. These requirements shall not apply to any direct employment by the Cheyenne River Sioux Tribe . . .

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A. Every covered employer with a construction contract in the sum of \$50,000.00 or more shall pay a one-time fee of 1% of the total amount of the contract. . . .

B. Every covered employer, other than construction contractors, with twenty (20) or more employees working on the Cheyenne River Sioux Reservation, or with gross sales on the Cheyenne River Sioux Reservation of \$50,000 or more shall pay a quarterly fee of 1% of his employees quarterly payroll which shall be paid within 30 days after the end of each quarter.

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N. 53 Fed. Reg. 20, 179 (1988)

Bureau of Indian Affairs

Cheyenne River Sioux Tribe of South Dakota;
Ordinance Amending Alcohol Beverages Control Law

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Sec. 1-1-1. *Statement of Purpose.* The purpose of this Alcoholic Beverages Control Law is to regulate the activities of the manufacture, distribution, sale and consumption of liquor on the Cheyenne River Sioux Reservation. Any person desiring to engage in the possession, sale, trade, transport or manufacture of alcoholic beverages on the Cheyenne River Sioux Indian Reservation shall comply with the rules and regulations set forth in this Alcoholic Beverages Control Law. This Ordinance shall be cited as the "Cheyenne River Sioux Alcoholic Beverages Control Law" and, pursuant to the constitutional and inherent sovereignty of the Cheyenne River Sioux Tribe, shall be deemed an exercise of the Tribe's powers for the purpose of protecting the welfare, health, peace, morals and safety of all people residing on the Cheyenne River Sioux Reservation.

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O. Draft of By-laws of Cheyenne River Sioux Tribe (Dec. 23, 1935)

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BYLAWS OF THE CHEYENNE RIVER SIOUX
TRIBE OF SOUTH DAKOTA

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Article V Section 1

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(c) This court shall have jurisdiction over all Indians upon the reservation and over such disputes or lawsuits as shall occur between Indians on the reservation or between Indians and non-Indians where such cases are brought before it by stipulation of both parties provided that jurisdiction over Indian employees of the Indian Service shall be subject to rules and regulations prescribed by the Secretary of the Interior.

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P. Complaint of Cheyenne River Sioux Tribe v. Farmers Union Oil, Lester Starr (July 25, 1988)

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III. The defendant operates a liquor establishment within the exterior boundaries of the Cheyenne River Sioux Reservation without the appropriate tribal business and liquor licenses in violation of Ordinance No. 1, governing tribal business license and in violation of Ordinance No. 48, the Alcoholic Beverages Control Law.

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WHEREFORE, Plaintiff requests judgment as follows:
1. Adjudging that the defendant is subject to the jurisdiction of the Cheyenne River Sioux Tribe. 2. That defendant herein is in violation of Ordinance No. 1 for the failure to secure the appropriate tribal business license. 3. That Defendant herein is in violation of Ordinance No. 48 for the failure to secure the appropriate tribal liquor license. 4. Plaintiff requests to the courts for injunctive relief in the form of closing down said establishments owned by the defendant until such time as defendant has secured the appropriate business and liquor license from the Cheyenne River Sioux Tribe.

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Q. Letter from Wayne Ducheneaux, Chairman of Cheyenne River Sioux Tribe to Mr. Green, Mayor of Dupree (Feb. 12, 1988) with Resolution No. E. 52-88-CR attached

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Dear Mr. Green:

Please find enclosed the above referenced resolution detailing sanctions adopted by the Cheyenne River Sioux Tribe which are directed towards the cities of Timber Lake and Dupree. . . .

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. . . The economic sanctions will not only affect your local banks and grocery outlets but, also, includes the businesses therein.

The Tribe will also make a concerted effort to influence the Indian students and parents thereof into transferring said Indian students to the Cheyenne-Eagle Butte School, thereby endangering the federal and State funding received due to your large Indian student populations.

I had sincerely hoped that our government to government relationship had been one of mutual respect and concern for the citizens of our communities, but the Tribe has been met with nothing but belligerent and hostile attitudes from both governing bodies.

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R. Letter from Wayne Ducheneaux, Chairman of Cheyenne River Sioux Tribe to Kenn Pugh (June 6, 1988)

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Pugh, Kenn, A., Attorney at Law . . .

P.O. Box 6, Dupree, SD 57623

As of February 8, 1988 our records show that your business has not remitted the required 1988 business license fee for doing business on the Cheyenne River Sioux Reservation. And/or, your firm also has not filed a business application with the CRST Revenue Department.

The procedures for this delinquent business license account have been initiated with delinquent notice. The administrative procedures includes assessing a penalty of ten percent (10%) of the fee owed for each month the business license fee is not paid . . .

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. . . Should your business fail to come into compliance with tribal ordinance governing the business licensing requirements, the Bureau of Indian Affairs may be forced to implement federal law regarding the Federal Trader's licensing provisions.

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**S. Letter from Congressman Sensenbrenner, Wisconsin, to
Constituent (June 28, 1988)**

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On June 3rd, Federal District Judge Barbara Crabb issued a decision in the continuing lawsuit over Chippewa hunting and fishing rights. This decision, in my opinion, is far worse than Judge James Doyle's landmark decision of February 1987.

Judge Crabb ruled that the Chippewa have the right to harvest *all* of the more than 175 species of animals and plants listed in the Doyle decision and that they have the right to use *all* of the harvest methods employed in treaty times and developed since then. Crabb ruled that the Chippewa have greater rights to hunt, fish and gather in the "ceded" territory than do non-Indians and that the Chippewa's rights are "paramount."

What this ruling means is that the Chippewa have the rights to all of the fish and game in northern Wisconsin and that non-Indians have no rights to them at all.

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